

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimant Haim Sagie-Epstein
also acting on behalf of Michal Widerman¹

in re Account of S.L. Epstein

Claim Number: 002700/AY

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Haim Sagie-Epstein, (the “Claimant”) to the account of C. Epstein.² This Award is to the unpublished account of S.L. Epstein (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as his paternal grandfather, Simon Levi Chmaja Epstein, who was born on 30 January 1879 in Eichstetten, Germany, and was married to Ester Epstein, née Katzenstein, on 15 May 1921 in Freiburg, Germany. The Claimant indicated that his grandfather’s first wife, Luise Epstein, née Baer, died in 1919. The Claimant indicated that his grandfather was the owner of *S.L. Epstein – Epstein Metall* in Freiburg, Germany, a family owned business established in 1830 that specialized in supplying metal products especially for plumbing. The Claimant indicated that the company had branches in Basel, Switzerland; Karlsruhe, Germany; and Strasbourg, France. The Claimant stated that his grandfather likely had commercial relations with other European countries including Italy. The Claimant stated that after the Nazis came into power, his father tried to convince the Claimant’s grandfather to leave Germany and go to Israel, but his grandfather refused, saying he was a proud German. The Claimant indicated that in 1938 after

¹ The Claimant provided his name and some of his relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² The CRT will treat the claim to this account in a separate decision.

the “Night of the Broken Glass” (“*Kristallnacht*”), when his grandfather’s business was totally destroyed, and after his grandparents were forced out of their house, which was also set on fire by the Nazis, his grandparents tried to escape to Switzerland, but despite having a business in Basel, the Swiss authorities denied their entrance. The Claimant’s grandparents then managed to escape to Italy, where they resided at Viale Campania 5, Milan and later at Via Marcona 77, Milan. The Claimant indicated that his grandparents were shot in the street after escaping from a train that was on its way to Auschwitz.

The Claimant submitted his father’s birth certificate indicating he was born on 28 September 1910 in Freiburg to Simon Epstein and Luise Epstein, née Baer. The Claimant also submitted one letter dated 12 June 1941 sent from Israel by the Claimant’s father to the Claimant’s grandfather, Simon Epstein, in Italy, and another letter dated 20 November 1941 sent to the Claimant’s grandmother, Ester Epstein. The letters were sent with the help of the Red Cross to notify the Claimant’s grandparents of the birth of their grandchild, Haim Epstein, the Claimant. The Claimant indicated that he was born on 6 June 1941 in Israel. The Claimant is representing Michal Widerman, née Epstein, his sister, who was born on 19 May 1951 in Israel.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Simon Levi Chmaja Epstein.

Information Available in the Bank Records

The bank records consist of a power of attorney form executed in Milan on 3 April 1937, and printouts from the Bank’s database. According to these records, the Account Owner was S.L. Epstein and the Power of Attorney Holder was Ester Epstein, the Account Owner’s wife, who resided at Corso Plebisciti 12, Milan, Italy. The bank records indicate that the Account Owner held an account of unknown type that was closed in 1942. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His grandparents’ names match the unpublished names of the Account Owner and the Power of Attorney Holder. The Claimant identified his grandparents’ city of residence, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records. In support of his claim, the Claimant submitted his father’s birth certificate, indicating that he was born to Simon Epstein and Luise Epstein, née Baer. The Claimant also submitted a copy of two letters sent by the Claimant’s father from Israel to Italy to the Claimant’s grandparents, Ester Epstein and Simon Epstein, notifying the Claimant’s grandparents of the birth of their grandchild, Haim Epstein, the Claimant. The CRT notes that the Claimant filed an Initial Questionnaire with the

Court in 1999 asserting his entitlement to a Swiss bank account owned by Simon Levi Chmaja Epstein, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his present claim on a direct family relationship to the Account Owner whose name was not included in the ICEP List. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Simon Epstein, and indicates that he was born in 1879 in Germany, that he was a metal dealer from Freiburg, Germany, and that he resided in Italy, which matches the information about the Account Owner provided by the Claimant. The above list also contains the name of Ester Epstein, née Katzenstein, from Freiburg, which matches the information about the Power of Attorney Holder provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The foregoing data supports the credibility of the information provided by the Claimant.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that in 1938 during the “the Night of the Broken Glass” (“*Kristallnacht*”) his grandparents were forced out of their house, which was set on fire by the Nazis. The Claimant stated that his grandfather’s business was totally destroyed by the Nazis. The Claimant indicated that his grandparents were shot in the street after escaping from a train that was on its way to Auschwitz concentration camp.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his father's birth certificate and letters from his father to his grandparents, demonstrating that the Account Owner is his paternal grandfather.

The Issue of Who Received the Proceeds

Given the application of Presumptions (a) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the “Rules”), the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his paternal grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister, Michal Widerman, née Epstein, in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive one-half (1/2) of any payment made to the Claimant.

Initial Payment

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 65% of the total award amount is 30,810.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

31 December 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); *see also* Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss

Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 -51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . .", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).